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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WQH

DEPUTY.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JULIUS FRANCISCO, on behalf of
himself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

DIEBOLD, INCORPORATED, an Ohio
Corporation,

Defendant.

Case No. 09 cv 1889 WQH WMc

**ORDER GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT AND
SETTING FINAL APPROVAL HEARING
AND GRANTING LEAVE TO FILE
THIRD AMENDED COMPLAINT**

Hearing Date: September 6, 2011

Hearing Time: 11:00 a.m.

Courtroom: 4

Judge: Hon. William Q. Hayes

The joint motion of Plaintiff Julius Francisco and Defendant Diebold, Incorporated (collectively the “Settling Parties”) came before this Court for an order (1) Conditionally Certifying Settlement Classes; (2) Preliminarily Approving Class Action Settlement; (3) Directing Distribution of Class Notice; (4) Setting Hearing For Final Approval of the Settlement; and (5) Granting Leave to File Third Amended Complaint. The Court has considered the Joint Stipulation of Class Settlement and Class Settlement Agreement and Release, the proposed Class Notice, the proposed Claim Form and Exclusion Form, the submissions of counsel, and all other papers filed in this action. The matter having been submitted and good cause appearing therefore, the Court at the hearing granted preliminary approval of the class action settlement and the Court hereby finds and orders as follows:

1. All defined terms contained herein shall have the same meanings as set forth in the Joint Stipulation of Class Settlement and Class Settlement Agreement and Release executed by the Settling Parties and filed with this Court, including any amendments thereto, (the “Joint Stipulation”).

2. The Court finds on a preliminary basis that the Settlement memorialized in the Joint Stipulation is within the range of reasonableness and hereby grants preliminary approval of the Settlement.

3. The Court conditionally approves, for the purposes of approving this Settlement only and for no other purpose and with no other effect on the Action, including no effect on the Action should the Joint Stipulation not ultimately be approved or should the Final Effective Date not occur, an opt-out class under Rule 23, Federal Rules of Civil Procedure, that is defined as follows:

All current or former Second Line Technicians employed by Diebold Inc. in the State of California between August 28, 2005 and the earlier of the date of preliminary approval or July 31, 2011, whichever is earlier.

The proposed Class meets the requirements for certification under Rule 23 of the Federal Rules of Civil Procedure: (a) the proposed Class is ascertainable and so numerous that joinder of all members of the class is impracticable; (b) there are questions of law or fact common to the proposed Class; (c) the claims of Plaintiff Julius Francisco are typical of the claims of the members of the proposed

Class; (d) Plaintiff Julius Francisco will fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class Representative is qualified to serve as counsel for the Class Representatives in his own capacity as well as in his representative capacity and for the Class.

4. The Court hereby appoints Julius Francisco as Class Representative for the Class. The Court appoints Norman B. Blumenthal and Kyle Nordrehaug of Blumenthal, Nordrehaug and Bhowmik as Class Counsel.

5. The Court hereby appoints Gilardi & Co. LLC as the Claims Administrator.

6. The Settling Parties have also presented to the Court for review a plan to provide notice to the proposed Class of the terms of the Settlement and the options facing them including, *inter alia*: to make a claim under the Settlement, to object to the Settlement or to request exclusion from the Settlement. The notice plan proposed by the Settling Parties in the Joint Stipulation is the best practical under the circumstances. The Notice of (1) Proposed Class Action Settlement and (2) Final Settlement Approval Hearing (“Class Notice”), Exclusion Form, and Claim Form, attached as Exhibits B through D to the Joint Stipulation, are hereby approved. The Claims Administrator shall mail Exhibits B through D to the Joint Stipulation to the Class Members pursuant to the applicable provisions in the Joint Stipulation. Diebold shall provide the Claims Administrator with the information necessary to conduct this mailing as set forth in the Joint Stipulation.

7. The Court hereby establishes the following deadlines:

October 3, 2011

Deadline for Claims Administrator to mail Class Notice, Claim Form and Exclusion Form.

November 17, 2011

Deadline for Class Members to postmark or deliver objections to the Settlement to the Claims Administrator.

December 2, 2011

**Deadline for Class Members to
postmark or deliver Claim Forms to
the Class Administrator and Deadline**

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for Class Members to postmark or
deliver Exclusion Forms to the Claims
Administrator.

4 **January 6, 2012**

5 Deadline for Class Counsel to file and
6 serve motion for final approval of
Settlement and motion for attorney's
fees, costs, and Class Representative
payment.

7 **February 3, 2012**

8 Final Approval Hearing

9 8. Individual Class Members may be heard at the Final Approval Hearing, either
10 personally or through their counsel, only if they serve on the Claims Administrator, on or before 45
11 days from the date of the mailing of the Class Notice, a written objection to the Settlement and/or a
12 written notice of their intention to appear at the Final Approval Hearing, provided they have timely
13 filed a Claim Form.

14 9. Counsel for the parties shall respond to any written objection to the Settlement
15 in their motion for final approval, which motion shall be filed and served by January 6, 2012. The
16 Final Approval Hearing is set for February 3, 2012 at 10:30 a.m. in Courtroom 4 of this Court. In
17 addition, at the Final Approval Hearing, Class Counsel shall be prepared to address any objections to
the Settlement and to provide other information as appropriate bearing on whether or not the
18 Settlement should be finally approved.

19 10. In the event that the Final Effective Date occurs, all Class Members who do
20 not timely and validly exclude themselves from the Class, will be deemed to have forever released
21 and discharged the Released Claims. In the event that the Final Effective Date does not occur for
22 any reason whatsoever, the Joint Stipulation shall be deemed null and void and shall have no effect
23 whatsoever.

24 11. The Court grants Plaintiff leave to file a Third Amended Complaint to clarify
25 the scope of the Complaint as including CSEs ("customer solutions engineers or second line
26 technicians") employed in California only, and to add claims for compensation for missed meal and
rest periods pursuant to California Labor Code sections 226.7 and 512, waiting time penalties
27 according to Labor Code section 201-203, civil penalties under the California Private Attorney

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2 General Act ("PAGA"), California Labor Code Section 2698, *et. seq.* The allegations in the
3 Amended Complaint are deemed controverted by the Answer previously filed by Diebold in
4 response to the Complaint, and no further responsive pleading is required.

5 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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7 DATED: 9/20/11


The Honorable William Q. Hayes
UNITED STATES DISTRICT JUDGE

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